

**PATENT APPLICATION**  
**Attorney Docket: 2823 (203-3209PCTUS)**

**REMARKS**

The present application has been reviewed in light of the Office Action mailed June 26, 2007. By this amendment, claims 1-22 are currently pending, of which, claims 1, 2 and 4-5 have been amended, claims 16-22 have been withdrawn, and new claims 23 and 24 have been added. No new matter has been introduced by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Applicants affirm the election made on May 9, 2007, without traverse, of Invention I, claims 1-15. Accordingly, Applicants reserve the right to present withdrawn claims 16-22 in a divisional or continuation application(s).

New claims 23 and 24 have been added which rewrite claims 4 and 5 in independent form. Applicants respectfully submit that claims 23 and 24 are allowable, in view of the arguments presented below with regard to the rejections of claims 1, 4, and 5.

Claim 2 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 has been amended herein, without prejudice, to more clearly indicate that the inner annular wall is configured to be radially inward of the at least one annular arrangement of staples of the staple cartridge assembly, thus the staples are not a structural part of the claimed invention. Accordingly, in view of the amendment to claim 2, withdrawal of this rejection is respectfully requested.

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Claims 1, 3, 6-8, 10, 12, and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Dahlke et al. (U.S. Patent No. 4,821,996). Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Dahlke because Dahlke fails to teach each and every feature of claim 1. Accordingly, the rejection of claim 1 is respectfully traversed.

According to Section 2131 of the MPEP, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Claim 1 recites a support structure including, *inter alia*, an annular ring configured and adapted to substantially overlie the at least one annular arrangement of staples of the staple cartridge assembly, the annular ring including an outer annular wall having a diameter; an inner annular wall spaced a radial distance inward of the outer annular wall and defining a space; an upper wall interconnecting the outer annular wall and the inner annular wall; and a lower wall spaced a distance from the upper wall and interconnecting the outer annular wall and the inner annular wall, the outer annular wall, the inner annular wall and the upper and lower walls defining an interior reservoir; and a wound closure material retained in the reservoir and releasable therefrom.

In contrast Dahlke discloses a hose-like implant or pad hose 2 which is placed in an annular manner around the esophagus O above stomach M. Pad hose 2 comprises a porous sheet-like material. Dahlke discloses the hose-like or cushion-like pad with a diameter of 12mm is placed in a collar-like manner around the distal esophagus and sewn together at the overlapping ends. (see Col. 3, lines 40-42 and Col. 4, lines 1-4).

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Additionally, the implant of Dahlke includes a filling 8 retained therein. Filling 8 comprises discrete pieces of individual threads of filaments. (see Col. 3, lines 37-38). Applicants respectfully submit that Dahlke does not disclose that the filling 8 is ever released from the implant.

Accordingly, in view of the foregoing amendments and remarks, Applicants respectfully submit that Dahlke fails to disclose or even suggest each and every feature recited in claim 1, because Dahlke does not disclose or suggest a support structure including, *inter alia*, an annular ring and/or a wound closure material retained in the reservoir and releasable therefrom, as recited in claim 1.

In view of the arguments presented above, Applicant respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Dahlke because Dahlke fails to disclose each and every feature of claim 1.

Since claims 3, 6-8, 10, 12, and 13 depend, directly or indirectly, from claim 1, and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 3, 6-8, 10, 12, and 13 are also patentable over Dahlke.

Claims 1, 6, and 9 were rejected under 35 U.S.C. 102(b) as being anticipated by Swartz (U.S. Patent No. 5,344,459). Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Swartz because Swartz fails to teach each and every feature of claim 1. Accordingly, the rejection of claim 1 is respectfully traversed.

Applicants submit that Swartz discloses an arthroscopically implantable prosthesis 20 which comprises a single annular ring which may contain one or a plurality of compartments which are

collapsible, inflatable or expandable. Swartz also discloses that the compartments are connected to an inflation or expansion tube next to a coupler. According to Swartz, the material used for inflating or expanding the compartments is a gel which partially hardens or can be cured to form a semi-solid which is radiopaque. (see Col. 5, lines 24-26). The prosthesis is used to provide pain relief, support, mobility and correction of joint angulation in a joint. (see Col. 3, lines 46-48). The prosthesis is inflated to provide support between the two sides of a joint, as seen in FIG. 13.

Accordingly, in view of the foregoing amendments and remarks, Applicants respectfully submit that Swartz fails to disclose or even suggest each and every feature recited in claim 1, because Swartz does not disclose or suggest a support structure including, *inter alia*, an annular ring and/or a wound closure material retained in the reservoir and releasable therefrom, as recited in claim 1.

In view of the arguments presented above, Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Swartz because Swartz fails to disclose each and every feature of claim 1.

Since claims 6 and 9 depend, directly or indirectly, from claim 1, and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 6 and 9 are also patentable over Swartz.

Claims 1, 10, and 11 were rejected under 35 U.S.C. 102(e) as being anticipated by Kuslich (U.S. Patent No. 6,712,853). Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(e) over Kuslich because Kuslich fails to teach each and every feature of claim 1. Accordingly, the rejection of claim 1 is respectfully traversed.

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Applicants submit that Kuslich discloses a pliable band or hoop that is flexible to normal handling. In particular, Kuslich states that band 12 is pliable and malleable before its interior space 14 is filled with hydroxyapatite or other biocompatible material known to promote bone formation. (see Col. 8, lines 29-31).

Additionally, Kuslich states that where the [band] material 16 is provided with [such] a porous construction, pores or weave gaps are preferably tight enough to retain small particles of enclosed fill material. (see Col. 8, lines 46-49) In other words, Kuslich does not disclose or contemplate that any of the fill material will be released from band 12. The band 12 is interposed between two vertebrae and filled with fill material so that the fill material pushes against the vertebrae and provide support to the joint. (see Col. 9, lines 62-67).

Accordingly, in view of the foregoing amendments and remarks, Applicants respectfully submit that Kuslich fails to disclose or even suggest each and every feature recited in claim 1, because Kuslich does not disclose or suggest a support structure including, *inter alia*, an annular ring and/or a wound closure material retained in the reservoir and releasable therefrom, as recited in claim 1.

In view of the arguments presented above, Applicant respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(e) over Kuslich because Kuslich fails to disclose each and every feature of claim 1.

Since claims 10 and 11 depend, directly or indirectly, from claim 1, and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 10 and 11 are also patentable over Kuslich.

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Claims 1, 14, and 15 were rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (U.S. Patent No. 5,766,223). Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Johnson because Johnson fails to teach each and every feature of claim 1. Accordingly, the rejection of claim 1 is respectfully traversed.

Applicants submit that Johnson discloses a child's teething device having a first end 2 and a second end 4, and a central member 6. The first end is a resilient material, such as soft rubber. (see Col. 1, lines 45-46). Johnson further states that the resilient material easily deflects upon normal pressure applied to the material by an infant chewing on the device.

Additionally, Johnson discloses that the device may be provided with a void 10 which contains a material 12 which is liquid at room temperature and which is capable of being frozen. (see Col. 1, lines 58-67). Accordingly, Johnson does not contemplate or disclose that the material 12 is to be released from the device.

Accordingly, in view of the foregoing amendments and remarks, Applicants respectfully submit that Johnson fails to disclose or even suggest each and every feature recited in claim 1, because Johnson does not disclose or suggest a support structure including, *inter alia*, an annular ring and/or a wound closure material retained in the reservoir and releasable therefrom, as recited in claim 1.

In view of the arguments presented above, Applicant respectfully submit that claim 1 is allowable under 35 U.S.C. § 102(b) over Johnson because Johnson fails to disclose each and every feature of claim 1.

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Since claims 14 and 15 depend, directly or indirectly, from claim 1, and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 14 and 15 are also patentable over Johnson.

Claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Dahlke et al. (U.S. Patent No. 4,796,603). Applicants respectfully submit that claim 2 is allowable over Dahlke.

Applicants respectfully submit that claim 2 directly depends from claim 1 and therefore includes all of the features included in claim 1. As discussed above, Dahlke does not disclose, or even suggest, all of the features recited in claim 1, thus claim 1 is patentable. Therefore, Applicants respectfully submit that claim 2 is also patentable.

Claims 4 and 5 were rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz in view of Meschan (5,918, 384). Applicants respectfully submit that each of claims 4 and 5 is allowable over Swartz in view of Meschan.

Applicants respectfully submit that Meschan, either alone or combined with Swartz, does not disclose or suggest an annular ring comprising at least one removable spoke as called for in amended claims 4 and 5.

Accordingly, in view of the amendments to claims 4 and 5 herein and in view of the remarks/comments provided above, Applicants submit that Swartz, taken alone or in any proper combination with Meschan, fails to render either of dependent claims 4 or 5 obvious under 35 U.S.C. §103(a) in that Meschan fails to teach and/or suggest *all* of the deficient limitations of Swartz.

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As such, Applicants respectfully submit that the rejection of claims 4 and 5 under 35 U.S.C. §103(a), as being unpatentable over Swartz in view of Meschan should be withdrawn.

Applicant also respectfully submits, that none of the references cited by the Office disclose an annular ring that is configured and adapted to substantially overlie an annular arrangement of surgical staples. Moreover, the references cited by the Office are non-analogous art because said references are not in the Applicants' field of endeavor and that said references are in no way reasonably pertinent to the particular usefulness with which the Applicants were concerned.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of all pending claims is earnestly solicited.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicants' undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 1-15, 23 and 24 is earnestly solicited.

Respectfully submitted,



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